

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

BUILDING CODE APPEALS BOARD  
DOCKET NO.: 10-956

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Hollow Brook Farms LLC,  
Appellant

v.

Town of Brimfield,  
Appellees  
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**BOARD'S RULING ON APPEAL**

**Introduction**

This matter came before the State Building Code Appeals Board ("Board") on appellant's appeal filed pursuant to G.L. c.143, §100 and 780 CMR 122.1. In accordance with 780 CMR 122.3 the appellant petitioned the Board to grant a variance to the Sixth Edition of the Massachusetts State Building Code ("Code"). For the following reasons, the appeal is hereby **GRANTED**.

The appellant requested that the Board grant a variance to 780 CMR Section 111.8. Ronald and Linda Weston, owners of Hollow Brook Farms appeared for the hearing *pro se*. Louise Vera, State Building Inspector, and Harold P. Leaming City Building Inspector appeared on behalf of the appellee. All witnesses were duly sworn.

**Procedural History**

The Board convened a public hearing on December 2, 2010, in accordance with G.L.c. 30A, §§10 & 11; G.L.c. 143, §100; 801 CMR 1.02; and 780 CMR 122.3. All interested parties were provided with an opportunity to testify and present evidence to the Board.

**Findings of Fact**

The facts of this matter are largely not in dispute. Instead, this matter turns on the review of the applicable provisions of the State Building Code. The Board bases the following findings upon the testimony presented at the hearing. There is substantial evidence to support the following findings:

1. The property at issue is located at 47B Hollow Road, Brimfield, MA.
2. The property was initially permitted under the 6<sup>th</sup> edition of the State Building Code in 2003.
3. Work on the project stopped when the State of Massachusetts stepped in under its APR Program.
4. There was pending litigation between the owners and the Department of Agriculture.
5. A law rescinding the agricultural restrictions for this parcel of land was passed in August of 2010 by the Massachusetts State Legislature.

## Analysis

### A. Jurisdiction of the Board

There is no question that the Board has jurisdiction to hear this case. The governing statute provides that:

Whoever is aggrieved by an interpretation, order, requirement, direction or failure to act by any state or local agency or any person or state or local agency charged with the administration or enforcement of the state building code or any of its rules and regulations, except any specialized codes as described in section ninety-six, may within forty-five days after the service of notice thereof appeal from such interpretation, order, requirement, direction, or failure to act to the appeals board. G.L. c.143, §100.

The issues giving rise to this matter directly implicate provisions of the Code. As such, this Board has jurisdiction to decide this case pursuant to G.L. c. 143, §100.

### B. State Building Code requirements

The issue is whether to grant an appeal based on 780 CMR 111.8, which states, in part, “Any permit issued shall be deemed abandoned and invalid unless the work authorized by it shall have been commenced within six months after its issuance; however, for cause, and upon written request of the owner, one or more extensions of time, for periods not exceeding six months each, may be granted in writing by the building commissioner or inspector of buildings. Work under such a permit in the opinion of the building commissioner or inspector of buildings, must proceed in good faith continuously to completion so far as is reasonably practicable under the circumstances. It is the sole responsibility of the owner to inform, in writing, the building commissioner or inspector of buildings of any facts which support an extension of time. The building commissioner or inspector of buildings has no obligation under 780 CMR 111.7 to seek out information which may support an extension of time. The owner may not satisfy this requirement by informing any other municipal and/or state official or department. For purposes of 780 CMR 111.7 any permit issued shall not be considered invalid if such abandonment or suspension of work is due to a court order prohibiting such work as authorized by such permit; provided, however, in the opinion of the building commissioner or inspector of buildings, the person so prohibited by such court order, adequately defends such action before the court.” 780 CMR 111.8.

The appellant testified that it was only due to the stoppage by the State that the permit expired and that they continued trying to get the permit renewed. The appellant also submitted documentation and testified regarding the law that was passed that allowed them to continue.

The local building official testified that he had no objection to continuing the permit, and that he believes that the appellant has continued in good faith, but based on the length of time between the initial permit and now (2003-2010) he wants to make sure that the appellant is in compliance with the Code.

The State Building Inspector testified that she was also in favor of granting the appeal.

## Conclusion

A motion was made by Jacob Nunnemacher and seconded by William Harrick's to **Grant** the Motion to grant the appeal to 780 CMR 111.8 6<sup>th</sup> edition, based on the fact that it appears from testimony that the appellant has proceeded in good faith to fruition and the building permit should be continued.

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Jacob Nunnemacher

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Jeffrey Putnam

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William Horrocks

*Any person aggrieved by a decision of the State Building Code Appeals Board may appeal to Superior Court in accordance with G.L. c.30A, §14 within 30 days of receipt of this decision.*

DATED: January 20, 2011